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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,412

04/15/2004

Sabine Behrends

Serie 6292

9359

466 7590 01/27/2009
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209 Madison Street
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ALEXANDRIA, VA 22314

EXAMINER

MCKANE, ELIZABETH L

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

01/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/825,412	Applicant(s) BEHRENDT ET AL.	
	Examiner ELIZABETH L. MCKANE	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 73-76, 79 and 80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 73-76, 79 and 80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 73-76, 79, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langford (US 5,906,802) in view of Beilfuss et al. (US 2004/0059006).

Langford teaches a process for sterilizing an endoscope wherein the instrument is first cleaned with a detergent to remove bioburden therefrom, disinfected with a liquid or gas sterilant, rinsed with sterile water, and then dried. See col.1, lines 40-52; col.2, lines 35-42; col.3, lines 16-19; col.5, lines 25-26. Langford is silent with respect to using a sterilant composition including an alkyl glycercol ether and an aromatic alcohol. Beilfuss et al. teaches that it was known in the art at the time of the invention to use a sterilant mixture of a 1-(2-ethylhexyl) glycerol ether and an aromatic alcohol as a disinfectant for medical devices, such as endoscopes. See Abstract; paragraph [0033]. It would have been obvious to employ the sterilant of Beilfuss et al. as the sterilant of Langford since Langford teaches that "[t]hose of ordinary skill in the art readily

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recognize various other sterilants which can be used" (col.2, line 67 to col.3, line 2) and since Beilfuss et al. discloses that the sterilant is effective against mycobacteria, gram-negative and -positive bacteria, viruses and a variety of other pathogens. See paragraph [0036]. Although Langford is silent with respect to a disinfection time, Beilfuss et al. teaches that "[t]hose skilled in the art will select here an optimum between the parameters time of action and concentration of the components...depending on the sensitivity of the material to be disinfected" (paragraph [0035]. Thus, it is deemed obvious to optimize the time the sterilant is in contact with the instrument as being a recognized result effective variable. As to treatment temperature, Langford discloses that the cleaner/detergent and sterilant may be heated by contact with heated water (col.7, lines 35-39; Figure 10) prior to contact with the endoscope. Although a temperature is not specified by Langford, temperature is a known result effective variable which is readily optimized by one of ordinary skill in the art. As an increase in temperature would ordinarily result in a decrease of sterilant concentration and contact time, the optimization of a result effective variable would be considered an unpatentable modification in the absence of unexpected results. Langford also discloses that the sterilized endoscope may be dried with heated air (col.5, lines 22-24). Again, although the temperature of heated air is not disclosed by Langford, it is well-within the purview of one of ordinary skill in the art to determine an appropriate and optimized drying temperature for most efficient drying while preventing damage to the endoscope.

Response to Arguments

4. Applicant's arguments, see pages 4-7, filed 16 January 2009, with respect to the rejection(s) of claim(s) 73-76, 79, and 80 under Langford, Waldmann-Laue et al. and Tu et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Langford and Beilfuss et al..

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH L. MCKANE whose telephone number is (571)272-1275. The examiner can normally be reached on Mon-Fri; 5:30 a.m. - 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/
Primary Examiner, Art Unit 1797

elm
21 January 2009